

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE:

B-222867

DATE: May 1, 1986**MATTER OF:**

Sigma Teleproducts, Inc.

DIGEST:

Protest based on alleged impropriety apparent in an invitation for bids filed with the agency before bid opening was timely, but subsequent protest filed with GAO more than 10 days after initial adverse agency action, the opening of bids, is untimely.

Sigma Teleproducts, Inc. (Sigma), protests any award of a contract for a lot of arthroscopic equipment under invitation for bids (IFB) No. 501-66-86, issued by the Veterans Administration (VA). Sigma's basis of protest is that the IFB specifications are unduly restrictive because they do not permit Sigma to bid on only one item in the lot--the electronic video system. The IFB solicited bids only from bidders who can supply the entire equipment at a lump-sum price. Sigma contends that its product meets or exceeds the VA's needs for the video equipment and, therefore, argues that the VA should be required to amend the solicitation specifications to permit bidding on an item-by-item basis.

We dismiss the protest as untimely.

The record shows that by letter dated March 31, 1986, Sigma filed a timely protest before bid opening with the contracting officer objecting to the specifications. We have been informally advised by the VA that no response to Sigma's protest was made but on April 8 bids were opened without any revisions to the specifications. On April 18, Sigma filed a mailgram with our Office objecting to the bid opening under "the solicitation as it currently is structured." A subsequent detailed protest letter was not received until April 24, more than 10 days after bid opening.

Section 21.2(a)(3) of our Bid Protest Regulations requires that, if a protest is filed initially with the contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has

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actual or constructive notice of initial adverse agency action. See 4 C.F.R. § 21.2(a)(3) (1985). This is defined as any action or inaction that is prejudicial to the position taken in a protest filed with the agency. Id. § 21.0(e).

Here, in response to Sigma's protest, the VA proceeded with bid opening without any revisions to the manner of bidding. This constituted initial adverse agency action; therefore, Sigma was required to protest here within 10 days of that action. Since the protester did not provide a detailed statement of the facts and legal arguments relevant to its protest until more than 10 working days after Sigma had actual or constructive notice of initial adverse agency action, the protest is untimely. See 4 C.F.R. § 21.1(c)(4) (1985). The fact that Sigma's mailgram was received here 8 days following bid opening does not stay this 10-day requirement since the mailgram did not contain a detailed statement of the factual and legal grounds of protest. Id.; see also United Telecontrol Electronics, Inc., B-219024, July 1, 1985, 85-2 C.P.D. ¶ 8.

Accordingly, the protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel